



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 59 OF 2013

JOSIAH CHEGE MACHARIA.....CLAIMANT

-VERSUS-

BOARD OF GOVERNORS MITHURI SECONDARY SCHOOL.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 28th February, 2014)

JUDGMENT

The claimants filed the statement of claim on 13.03.2013 through Nderitu Komu & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. **A declaration that the respondent is liable to pay the claimant his monthly salary from January 2011 up to the time when the Claimant's employment will be lawfully terminated and also for payment in lieu of leave days not taken from 15th January, 2007.**
- b. **Costs of the suit.**
- c. **Any other or further relief that the court may deem fit and just to grant.**

The respondent filed the memorandum of response on 15.10.2013 through Wachira Mbuthia & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs.

The case was fixed for hearing on 9.12.2013 when by consent of the parties it was ordered that the case be determined on the basis of the documents filed for the parties including the respective parties' written final submissions. The claimant's submissions were filed on 20.12.2013 and the respondent's submissions were filed on 30.1.2014.

The claimant was employed by the respondent as a guard with effect from 15.01.2007 and at a monthly salary of Kshs.3,000.00. On 10.01.2013, the respondent's school was razed down by a fire. The claimant was implicated and was suspended effective 12.01.2011 until 2.05.2013 when the claimant's services were terminated.

The only issue for determination is whether the claimant is entitled to the remedies as prayed for.

The respondent has submitted that the claimant is entitled to Kshs.63,000.00 being unpaid salary for January 2011 to April, 2013 as claimed for. The respondent has also submitted that for pay in lieu of leave the claimant is entitled to Kshs.2,423.00 in 2007; Kshs.2,826.00 in 2008; Kshs.3,230.00 for 2009;

and Kshs.10,763.00 for 2010, 2011 and 2012. Under that claim, the respondent has submitted that the claimant is entitled to Kshs.82,382.00. The claimant has not denied owing the respondent Kshs.17,500.00 being unpaid school fees for his son who attended the respondent's school. Accordingly, the court finds that as submitted for the respondent, the claimant is entitled to Kshs.64,882.00 under prayer (a) of the statement of claim.

The court has considered that the offer was not made before filing of the suit and the claimant has substantially succeeded. The court therefore finds that the claimant is entitled to costs of the suit.

The claimant did not pray and plead beyond the issues for which the respondent has in its submissions agreed to settle as set out in this judgment. As submitted for the respondent, the claimant's submissions on underpayment, holidays, severance and house allowance were not pleaded. The court finds that the submissions were unfounded as they were not pleaded and no evidence was provided to support the same.

In conclusion, judgment is entered for the claimant against the respondent for:

1. **The respondent to pay the claimant Kshs.64,882.00 by 1.04.2014 failing, interest at court rates to be payable from the date of filing the suit being 13.03.2013 till full payment.**
2. **The respondent to pay costs of the suit.**

Signed, dated and delivered in court at Nakuru this Friday, 28th February, 2014.

BYRAM ONGAYA

JUDGE